IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.8809 of 1999

Dated: 26-06-2007

Between:

1. Gutha Mohan Reddy s/o Venkat Ram Reddy and 3 others.

... Petitioners

and

1. The District Collector, Nalgonda, Nalgonda District and 3 others.

... Respondents

ORDER:

Petitioners state that they are the absolute owners of the lands admeasuring Ac.1-11 gts. and Ac.1-32 gts. in Sy.Nos.163 and 173 respectively situated at Mahamadabad village, Narayanpuram Mandal, Nalgonda District. They also own an extent of Acs.25-00 of land, which is adjacent to the said lands. They are having water resources and pathway to the said lands is only through Sy.No.163 and there is no other approach to the said lands. The respondent - Government initiated proceedings for acquisition of lands in Sy.Nos.163 and 173 of Mahamadabad village for providing house sites to scheduled tribes. To avoid prolonged litigation, the Government introduced a scheme of

obtaining consent, from the pattadars before acquisition of the lands, in regard to the extent of land and also for payment of compensation. Accordingly, fourth respondent, who was the Mandal Revenue Officer by then, after negotiations took consent affidavit from them in Form – IV for acquisition of Acs.2-00 of land out of Sy.Nos.163 and 173 and also payment of compensation at the rate of Rs.40,000/- per acre. As per the agreement arrived at between them and fourth respondent, they agreed for acquisition of Ac.0-08 gts. in Sy.No.163 and Ac.1-32 gts. in Sy.No.173. However, fourth respondent after conducting survey of the lands in Sy.Nos.163 and 173 unilaterally without informing them and without obtaining their permission made corrections in the consent affidavit by altering the extent of land from Acs.2-00 to Acs.3-00 and thereafter respondents issued notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') for acquisition of the lands in an extent of

Ac.0-16 gts., Ac.0-16 gts., Ac.0-16 gts., and Ac.1-32 gts. in Sy.Nos.163/A1, 163/AA, 163/E, 173/A respectively totalling to Acs.3-00. They came to know about the change in the extent of land for the first time when they received notices in March, 1999 and they were informed that fourth respondent, who was then working as Mandal Revenue Officer of Narayanapuram Mandal and now transferred to Dindi Mandal, arbitrarily altered the extent of land from Acs.2-00 to Acs.3-00 and initiated land acquisition proceedings. Pursuant thereto, they submitted detailed representations dated 12-03-1999 and

03-04-1999 opposing the acquisition. They allege that on account of the said alteration their entire land in Sy.No.163 is being acquired, thereby affecting their pathway to their other adjacent agricultural lands as well as irrigation and water sources. The fourth respondent and other respondents have no power or authority to alter the extent of land furnished by them in their consent affidavit. As the action of respondents

in acquiring Acs.3-00 of land instead of Acs.2-00 and publishing the same in Gazette is highly arbitrary, they approached this Court and filed the present writ petition seeking a *mandamus* declaring the action of respondents 1 to 4 in acquiring the lands in an extent of Acs.3-00 out of Sy.Nos.163/A, 163/AA, 163/E, 173/A, instead of Acs.2-00 out of Sy.Nos.163/A and 173/A admeasuring Ac.0-08 gts., and Acs.1-32 gts., respectively, as arbitrary and illegal and to set aside the notification dated 06-02-1999 published in Nalgonda District Gazette.

2. A counter affidavit is filed on behalf of respondents 1 to 3, wherein while denying the averments mentioned in the affidavit filed in support of the writ petition, it is contended *interalia* that the Mandal Revenue Officer, Narayanpur after conducting Grama Sabha in Mahammadabad village on
10-12-1998 in his letter No.B/5180/98, dated 31-12-1998 submitted proposals to acquire Acs.3-00 belonging to petitioners in Sy.Nos.163 and 173 situated at Mahammadabad village of Narayanapur Mandal to provide house sites to 60 identified Scheduled Tribe families of Venkambavi thanda, h/o Mahammadabad village @ Ac.0-05 cents to each of the beneficiary. It is stated that enquiry with regard to the allegation of alteration made from Acs.2-00 to Acs.3-00 is under process. It is also contended that even after acquisition the landowners still possess Acs.10-16 gts. of land in Sy.No.163. In fact, the pattadars do not come under the category of small farmers, as they have got ample landed property.

3. Heard Sri N. Vasudeva Reddy, learned counsel for petitioners, learned Government Pleader for Land Acquisition for respondents.

4. According to learned counsel for petitioners, petitioners agreed to part with only an extent of Acs.2-00 and had the Government wanted to

acquire Ac.3-00 of land in the said survey number, they would not have entered into the said agreement. He further contended that now under the guise of the said agreement and manipulating the consent affidavit, respondents have issued notification proposing to acquire the land in an extent of Acs.3-00 of land contrary to the agreement, and as such the proposed acquisition of Acs.3-00 instead of Acs.2-00, is not justified.

5. No doubt, the Government has every right to acquire any land for public purpose, but when the Government has entered into an agreement with the landowners with regard to the extent of the land to be acquired and the amount of compensation to be paid, it has to stick on to the terms and conditions arrived at in such agreement.

6. In the instant case, petitioners during negotiations agreed to part with only an extent of Acs.2-00 of land stating that they are having water resource and path way to their other land in an extent of Acs.25-00 only through the remaining extent of Ac.1-00 in Sy.No.163 and accordingly they have given their consent affidavit on Non Judicial Stamp worth Rs.5-00, which was attested by the Land Acquisition Officer and pursuant thereto compensation was also fixed. It is their specific case that fourth respondent altered the extent of land from Acs.2-00 to Acs.3-00 and that on account of the said alteration their entire land in Sy.No.163 is being acquired, thereby affecting their path way to their other adjacent agricultural lands as well as irrigation and water sources. Though respondents 1 to 3 have filed a detailed counter affidavit denying the averments mentioned in the affidavit filed in support of the writ petition, they have not specifically disputed about the negotiations that have taken place between petitioners and fourth respondent in regard to the extent of the land. Moreover, in their counter affidavit they have categorically stated that the enquiry with regard to the allegation of alteration of the

extent of land is under process. In view of the factual scenario, this Court is of the view that the impugned notification is liable to be set aside.

7. Accordingly, the writ petition is allowed and the notification dated 06-02-1999 published in Nalgonda District Gazette is set aside. No costs.

Having regard to the fact that this Court on 22-04-1999 while issuing Rule Nisi, in W.P.M.P.No.10886 of 1999 refused to grant stay in regard to the admitted extent of Acs.2-00 in Sy.Nos.163 and 173 of Mahamadabad village, the respondents are at liberty to proceed against the said extent of Acs.2-00 in accordance with law if they so choose.

JUSTICE GOPALAKRISHNA TAMADA

Dt.26-06-2007
GLV